



## Sand, Gravel, and the Mineral Estate

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**Summary:** The WSFR Region 1 office requested we research a legal issue where mineral rights were severed on Washington State Department of Fish & Wildlife property. This interpretation reviews Washington State Court cases and real property information and presents general information on the sand and gravel, and how they are related to mineral estate. This interpretation is prepared by the WSFR Policy Branch and is not a legal opinion.

**Audience:** Washington Department of Fish & Wildlife staff, Regional WSFR Staff – Situation specific

**Program:** WSFR-administered programs that can purchase land or other real property.

**Background:** Washington Department of Fish & Wildlife (WDFW) acquired the Oak Creek Wildlife Area in 1951 with financial assistance from the Wildlife Restoration program. The Oak Creek Wildlife area is a split estate, severed from the property at the time of purchase, where WDFW owns the surface estate and an office supply company owns the mineral estate. An adjacent landowner, who does not own either of the estates, harvested a substantial amount of sand and gravel from the surface of the land. The adjacent landowner must compensate one of the estate owners for the materials they removed and owners disagree on how proceeds should be credited. We are addressing whether the sand and gravel that were removed are part of the surface estate or the mineral estate.

**Authorities:** <sup>1</sup>Saddle Mt. Minerals, L.L.C. v. Joshi, 116 Wn. App. 198, 65 P.3d 366, 2003 Wash. App.LEXIS 445 (2003)

<sup>2</sup>Puget Mill Co. v. Duecy, 1 Wn.2d 421; 96 P.2d 571; 1939 Wash. LEXIS 376 (1939)

<sup>3</sup>Kunkel v. Meridian Oil, 114 Wn.2d 896; 792 P.2d 1254; 1990 Wash. LEXIS 69; 110 Oil & Gas Rep. 330

<sup>4</sup>Greg Tolbert, *Real Property, Probate and Trust Section Midyear: Indispensable Updates, Insightful Practice Tips, Drafting Strategies – And More*, Washington State Bar Association, Vancouver, Washington, June 6-8 2008.

<sup>5</sup>Waring v. Foden, 1 Ch. Div. (1932) 276, 86 A.L.R. 969.

**Definitions:**     **Hard Rock Minerals** – Typically understood to include all metallic minerals (e.g. titanium, platinum, gold, silver, copper, nickel, tin, lead, and mercury) and certain nonmetalliferous minerals (e.g., diamonds, amber, and calcite).

**Mineral Estate** – A mineral interest in real property recorded in real estate records at the county in which the real property is situated which is not owned as part of the full fee title to the real property.

**Interpretation:** Washington State case law and legal reviews provide a complex narrative of mineral rights and definitions. Generally, courts have not defined the term “minerals” in the same way that science does and the legal meaning of the term is more restricted<sup>1</sup>. Many cases have defined “minerals” as inorganic substances that have substantial value when separated from the land. These cases do not consider sand as part of the mineral estate. In one case<sup>5</sup> the court held that sand and gravel were not minerals. The court decided that sand and gravel are not included in the meaning of the word “minerals” in either the commercial or the mining industries, and are instead part of the soil. In Puget Mill<sup>2</sup>, the court decided that

*The word “minerals,” standing alone, might by itself, under a broad, general popular definition, embrace the soil, hence include sand and gravel, and all that is to be found beneath the surface...if it did, it would include the soil itself. The better rule is that each case must be decided on the language of the grant or reservation, the surrounding circumstances, and the intention of the grantor if it can be ascertained.*

A Washington State legal review<sup>4</sup> provides guidance on how to define the mineral estate and which commodities are designated as part of the surface and mineral estates when an agreement is written in general terms including “oil, gas, and other minerals.” The review excludes sand and gravel from its definition of hard rock minerals. Instead, the review lists sand and gravel, along with many other constituents of the soil, as part of the surface estate. These precedents demonstrate that the intent of the conveyance is most important, regardless of the language. The mineral estate owner bears the burden of proving that sand and gravel are part of the minerals mentioned in the deed, if language in the documents conveying ownership is ambiguous<sup>3</sup>.